

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Tony Hammond; and
Robert G. Taub

Imperial Post Office
Imperial, Texas

Docket No. A2012-116

ORDER AFFIRMING DETERMINATION

(Issued May 2, 2012)

I. INTRODUCTION

On December 15, 2011, the Postal Service advised the Commission that it “will delay the closing or consolidation of any Post Office until May 15, 2012.”¹ The Postal Service further indicated that it “will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.” *Id.* It stated that the only “Post Offices” subject to closing prior to May 16, 2012 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. *Id.* It affirmed that it “will not close or consolidate any other Post Office prior to May 16, 2012.” *Id.* at 2. Lastly,

¹ United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011, at 1 (Notice).

the Postal Service requested the Commission “to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.” *Id.*

The Postal Service’s Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service’s request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. § 404(d)(5).

On January 11, 2012, Maxie King (Petitioner King) filed two petitions with the Commission, both individually and on behalf of the Imperial Public Library, seeking review of the Postal Service’s Final Determination to close the Imperial, Texas post office (Imperial post office).² Additional petitions for review were received from Wanda Lewis (Petitioner Lewis) and Nellie McDowell (Petitioner McDowell).³

The Final Determination to close the Imperial post office is affirmed.⁴

II. PROCEDURAL HISTORY

On January 26, 2012, the Commission established Docket No. A2012-116 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.⁵

² Petition for Review received from Maxie King regarding the Imperial, Texas post office 79743, January 11, 2012 (King Petition); Petition for Review received from the Imperial Public Library regarding the Imperial, Texas post office 79743, January 11, 2012 (Library Petition).

³ Petition for Review received from Wanda Lewis regarding the Imperial, Texas post office 79743, January 11, 2012 (Lewis Petition); Petition for Review received from Nellie McDowell regarding the Imperial, Texas post office 79743, January 11, 2012 (McDowell Petition).

⁴ The Commission is divided equally, 2-2, on the outcome of this appeal. In the absence of a majority, the Final Determination stands.

⁵ Order No. 1175, Notice and Order Accepting Appeal and Establishing Procedural Schedule, January 26, 2012.

On January 26, 2012, the Postal Service filed the Administrative Record with the Commission.⁶ The Postal Service also filed comments requesting that the Commission affirm its Final Determination.⁷

Petitioners filed participant statements supporting their Petitions.⁸ On March 21, 2011, the Public Representative filed comments.⁹

III. BACKGROUND

The Imperial post office provides retail postal services and service to 152 post office box customers. Final Determination at 2. No delivery customers are served through this post office. The Imperial post office, an EAS-11 level facility, provides retail service from 8:00 a.m. to 12:30 p.m. and 1:00 p.m. to 4:00 p.m., Monday through Friday, and 9:30 a.m. to 12:00 p.m. on Saturday. The lobby is open 24 hours a day, Monday through Saturday. *Id.*

The Final Determination indicates that the postmaster position became vacant on August 1, 2009.¹⁰ Final Determination at 2. A non-career officer-in-charge (OIC) was installed to operate the post office. Retail transactions average 14 transactions daily (13 minutes of retail workload). Post office receipts for the last 3 years were \$17,006 in FY 2008; \$24,273 in FY 2009; and \$14,925 in FY 2010. There are no permit or postage

⁶ The Administrative Record is attached to the United States Postal Service Notice of Filing, January 26, 2012 (Administrative Record). The Administrative Record includes, as Item No. 47, the Final Determination to Close the Imperial, Texas Post Office and Establish Service by Highway Contract Route Service (Final Determination).

⁷ United States Postal Service Comments Regarding Appeal, March 6, 2012 (Postal Service Comments).

⁸ Participant Statement received from Nellie McDowell, February 13, 2012 (McDowell Participant Statement); Participant Statement received from Wanda Lewis, February 13, 2012 (Lewis Participant Statement); Participant Statement received from Maxie King, February 14, 2012 (King Participant Statement).

⁹ Public Representative Comments, March 21, 2012 (PR Comments).

¹⁰ While the Final Determination indicates the postmaster retired, in fact the postmaster assumed the same position at the Fort Stockton post office. See Postal Service Comments at 2 n.5.

meter customers. *Id.* By closing this post office, the Postal Service anticipates savings of \$47,048 annually. *Id.* at 7.

After the closure, retail services will be provided by the Monahans post office located approximately 29 miles away.¹¹ *Id.* at 2. Delivery service will be provided by contract route service to cluster box units (CBUs) through the Monahans post office. The Monahans post office is an EAS-18 level post office, with retail hours of 9:00 a.m. to 4:30 p.m., Monday through Friday, and 10:00 a.m. to 1:00 p.m. on Saturday. Nine-hundred-seventy-five (975) post office boxes are available.

Retail services will also be available at the Grandfalls post office located approximately 11 miles away.¹² The Grandfalls post office is an EAS-11 level post office, with retail hours of 7:30 a.m. to 4:30 p.m., Monday through Friday, and 8:00 a.m. to 11:00 a.m. on Saturday. One-hundred-fifty-seven (157) post office boxes are available. *Id.* The Final Determination indicates that the Postal Service will continue to use the Imperial name and ZIP Code. *Id.* at 4, Concern No. 15; see *also* Administrative Record Item No. 50. However, the Postal Service's comments filed in this docket state that "[c]ustomers can continue to use the Imperial community name, although the ZIP Code will have to change." Postal Service Comments at 14.

IV. PARTICIPANT PLEADINGS

Petitioners. Petitioners oppose the closure of the Imperial post office. Petitioners assert that the Postal Service failed to consider the effect of the closing on the community. King Petition at 1; Library Petition at 1; Lewis Petition at 1; McDowell Petition at 1; McDowell Participant Statement at 2; Lewis Participant Statement at 2; King Participant Statement at 1-2. Petitioners also assert that there are factual errors contained in the Final Determination. King Petition at 1; Library Petition at 1; Lewis

¹¹ MapQuest estimates the driving distance between the Imperial and Monahans post offices to be approximately 29.3 miles (22 minutes driving time).

¹² MapQuest estimates the driving distance between the Imperial and Grandfalls post offices to be approximately 11.2 miles (12 minutes driving time).

Petition at 1; McDowell Petition at 1; McDowell Participant Statement at 1; Lewis Participant Statement at 1.

Postal Service. The Postal Service argues that the Commission should affirm its determination to close the Imperial post office. Postal Service Comments at 2. The Postal Service believes the appeal raises two main issues: (1) the effect on postal services; and (2) the impact on the Imperial community. *Id.* at 1. The Postal Service asserts that it has given these and other statutory issues serious consideration and concludes that the determination to discontinue the Imperial post office should be affirmed. *Id.* at 2.

The Postal Service explains that its decision to close the Imperial post office was based on several factors, including:

- the postmaster vacancy;
- a minimal workload and low office revenue;
- a variety of other delivery and retail options (including the convenience of rural delivery and retail service);
- limited effect on Postal Service employees; and
- expected financial savings.

Id. at 6. The Postal Service contends that it will continue to provide regular and effective postal services to the Imperial community when the Final Determination is implemented. *Id.* at 6-7.

The Postal Service also asserts that it has followed all statutorily required procedures and has addressed the concerns raised by Petitioners regarding the effect on postal services, the effect on the Imperial community, economic savings, and the effect on postal employees. *Id.* at 17.

Public Representative. The Public Representative determined that the Postal Service followed applicable procedures and that the decision to close the Imperial post office is neither arbitrary nor capricious. PR Comments at 2.

V. COMMISSION ANALYSIS

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination to close or consolidate a post office on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) without observance of procedure required by law; or (c) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.

A. Notice to Customers

Section 404(d)(1) requires that, prior to making a determination to close any post office, the Postal Service must provide notice of its intent to close. Notice must be given 60 days before the proposed closure date to ensure that patrons have an opportunity to present their views regarding the closing. The Postal Service may not take any action to close a post office until 60 days after its determination is made available to persons served by that post office. 39 U.S.C. § 404(d)(4). A decision to close a post office may be appealed within 30 days after the determination is made available to persons served by the post office. 39 U.S.C. § 404(d)(5).

The record indicates the Postal Service took the following steps in providing notice of its intent to close. On May 19, 2011, the Postal Service distributed questionnaires to customers regarding the possible change in service at the Imperial post office. Final Determination at 2. A total of 152 questionnaires were distributed to customers. Other questionnaires were made available at the retail counter. A total of 47 questionnaires were returned. On June 7, 2011, the Postal Service held a

community meeting at the Imperial post office to address customer concerns. *Id.*; Administrative Record Item No. 21. Eighty (80) customers attended. Final Determination at 2.

The Postal Service posted the proposal to close the Imperial post office with an invitation for comments at the Imperial, Grandfalls, and Monahans post offices from June 23, 2011 through August 24, 2011. *Id.* The Final Determination was posted at the same three post offices from December 9, 2011 through January 10, 2012. Administrative Record, Item No. 49.

The Postal Service has satisfied the notice requirements of 39 U.S.C. § 404(d).

B. Other Statutory Considerations

In making a determination on whether or not to close a post office, the Postal Service must consider the following factors: the effect on the community; the effect on postal employees; whether a maximum degree of effective and regular postal service will be provided; and the economic savings to the Postal Service. 39 U.S.C. § 404(d)(2)(A).

Effect on the community. Imperial, Texas is an unincorporated community located in Pecos County, Texas. Administrative Record, Item No. 16. The community is administered politically by the Pecos County Sheriff's Department, which also provides police protection. Fire protection is provided by the Imperial Volunteer Fire Department. The community is comprised of farmers, retirees, and those who work in local businesses or commute to work in nearby communities. *Id.* Residents may travel to nearby communities for other supplies and services. Final Determination at 6; see *also* Administrative Record, Item Nos. 16 (Community Survey Sheet), and 22 (returned customer questionnaires and Postal Service response letters).

As a general matter, the Postal Service solicits input from the community by distributing questionnaires to customers and holding a community meeting. The Postal Service met with members of the Imperial community and solicited input from the community with questionnaires. In response to the Postal Service's proposal to close

the Imperial post office, customers raised concerns regarding the effect of the closure on the community. Their concerns and the Postal Service's responses are summarized in the Final Determination. Final Determination at 1-5, 6.

Petitioners argue that the study was conducted during a vacation time when many were away and could not participate. King Petition at 1; Library Petition at 1; Lewis Petition at 1; McDowell Petition at 1. The Postal Service explains, however, that customers had several opportunities to participate and provide their input, including the questionnaire, community meeting, and invitation for comments. Postal Service Comments at 6 n.23.

Petitioners also contend that closing the location will inhibit growth and be a hardship on the poor and elderly. King Petition at 1; Library Petition at 1; Lewis Petition at 1; McDowell Petition at 1. They assert that travelling to the proposed CBUs will not be more convenient than traveling to the Imperial post office. *Id.* The Postal Service explains, however, that highway contract route service is beneficial to senior citizens and those who face special challenges because customers do not have to make a special trip to the post office for most services. Postal Service Comments at 12. Special provisions can be made for special customer needs as well. *Id.* The Postal Service also contends that there is no indication that the Imperial business community will be adversely affected by the closing, and that residents will continue to use local businesses. *Id.* at 15.

Petitioners also argue that the post office is important to their community and provides a place for community exchange. King Petition at 1; Library Petition at 1; Lewis Petition at 1; McDowell Petition at 1. The Postal Service explains, however, that a community's identity derives from the interest and vitality of its residents and their use of its name. Postal Service Comments at 14. It asserts that residents may continue to meet and socialize informally at other businesses, churches, and residences in the community, particularly at the Imperial Public Library. *Id.* at 15.

The Final Determination also notes that residents also will continue to use the Imperial community name and ZIP Code in addresses. See Final Determination at 4,

Concern No. 15; see *also* Administrative Record Item No. 50. However, the Postal Service's comments state that the ZIP Code will have to change. Postal Service Comments at 14 (footnote omitted). As support for this statement, the Postal Service cites to the Final Determination and the Administrative Record. *Id.* n.39. None of those cites supports the conclusion that the ZIP Code would change. To the contrary, the Final Determination states, "[t]he Postal Service is helping to preserve community identity by continuing the use of the suspended Post Office name and ZIP Code in addresses and in the National Five-digit ZIP Code and Post Office Directory." Final Determination at 4. While the apparent post-record change is cause for concern, it does not, under the circumstances, justify a remand. On these facts, it is most important that the town name be preserved, which is critical to its identity.

The Postal Service has adequately considered the effect of the post office closing on the community as required by 39 U.S.C. § 404(d)(2)(A)(i).

Effect on employees. Petitioners argue that the Imperial postmaster did not retire as stated in the Final Determination. King Petition at 1; Library Petition at 1; Lewis Petition at 1; McDowell Petition at 1. The Postal Service acknowledges that the Administrative Record incorrectly states that the Imperial postmaster retired on August 1, 2009. Postal Service Comments at 2 n.5. Upon further research, it was determined that the Imperial postmaster position became vacant when the postmaster applied for, and was awarded, the postmaster position at Ft. Stockton. *Id.* The Postal Service further explains that the record continues to reflect that the Imperial postmaster position is currently vacant, which is an appropriate basis for commencing a discontinuance study. *Id.* at 2 n.5, 12. An OIC has operated the Imperial post office since the postmaster left. Final Determination at 7. The Postal Service asserts that after the Final Determination is implemented, the temporary OIC may be separated and that no other Postal Service employee will be adversely affected. *Id.*

The Postal Service has considered the possible effects of the post office closing on the OIC and has satisfied its obligation to consider the effect of the closing on employees at the Imperial post office as required by 39 U.S.C. § 404(d)(2)(A)(ii).

Effective and regular service. The Postal Service contends that it has considered the effect the closing will have on postal services provided to Imperial customers. Postal Service Comments at 7. It asserts that customers of the closed Imperial post office may obtain retail services at the Monahans post office located 29 miles away. Final Determination at 2. Delivery service will be provided by contract route service to CBUs through the Monahans post office. The Imperial post office box customers may obtain Post Office Box service at the Monahans post office, which has 975 boxes available, or the Grandfalls post office, which has 157 boxes available. *Id.*

For customers choosing not to travel to the Monahans post office, the Postal Service explains that retail services will be available from the carrier. Postal Service Comments at 9, 12. The Postal Service adds that it is not necessary to meet the carrier for service since most transactions do not require meeting the carrier at the mailbox. *Id.*

The Postal Service also asserts that delivery to CBUs is expected to provide a maximum degree of effective and regular postal services to Imperial customers, and that nonpostal services will be available at the Monahans and Grandfalls post offices as well. Postal Service Comments at 8, 12, 13-15.

Petitioners argue that the Grandfalls post office is on a list of possible closures and therefore is not a true alternative to traveling to the more distant Monahans post office. King Petition at 1; Library Petition at 1; Lewis Petition at 1; McDowell Petition at 1. The Postal Service contends that no change in operations at the Grandfalls post office is in the record and such was not a factor at the time the Postal Service made the decision to discontinue the Imperial post office. Postal Service Comments at 10-11. The impact of closing the Grandfalls post office on Imperial residents would be considered, however, should a feasibility study of the Grandfalls office advance to the proposal stage. *Id.* at 10.

The Postal Service has considered the issues raised by customers concerning effective and regular service as required by 39 U.S.C. § 404(d)(2)(A)(iii).

Economic savings. The Postal Service estimates total annual savings of \$47,048. Final Determination at 7. It derives this figure by summing the following costs:

postmaster salary and benefits (\$44,279) and annual lease costs (\$8,000), minus the cost of replacement service (\$5,231). A one-time expense of \$7,370 also will be incurred for the relocation of the post office facility. *Id.* The Imperial facility lease, however, does not contain a termination clause and does not expire until August 31, 2014. Administrative Record, Item No. 18. Therefore, no savings attributable to the lease will materialize for approximately 18 months. Accordingly, the additional ongoing lease costs of \$8,000 per year should be factored into the net annual savings estimate until then.

The Imperial post office postmaster left his position at the Imperial post office on August 1, 2009. Final Determination at 2. The post office has since been staffed by a non-career OIC who, upon discontinuance of the post office, may be separated from the Postal Service. The postmaster position and the corresponding salary will be eliminated. *See, e.g.*, Docket No. A2011-67, United States Postal Service Comments Regarding Appeal, October 24, 2011, at 13; Docket No. A2011-68, United States Postal Service Comments Regarding Appeal, November 2, 2011, at 10. Furthermore, notwithstanding that the Imperial post office has been staffed by an OIC for approximately 2-1/2 years and that some ongoing lease related expenses may be incurred, the Postal Service has satisfied the requirements of section 404(d)(2)(A)(iv).

The Postal Service has satisfied the requirement that it consider economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

VI. CONCLUSION

The Postal Service has adequately considered the requirements of 39 U.S.C. § 404(d). Accordingly, the Postal Service's determination to close the Imperial post office is affirmed.¹³

¹³ See footnote 4, *supra*.

It is ordered:

The Postal Service's determination to close the Imperial, Texas post office is affirmed.

By the Commission.

Shoshana M. Grove
Secretary

Commissioner Hammond not participating.

DISSENTING OPINION OF CHAIRMAN GOLDWAY

The Administrative Record is inaccurate with regard to economic savings. As such, the Postal Service has not adequately considered economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

The Postal Service argues that savings should be calculated based on a full-time postmaster's salary. Yet the Imperial post office has been operated by a non-career officer-in-charge (OIC) since the former postmaster was promoted. On the one hand, the Postal Service argues that the effect on employees of this closing will be minimal because only a non-career OIC will be eliminated; yet on the other hand, it argues that the savings should be calculated using a full-time postmaster position.

The Postal Service already claims billions of dollars in savings from reducing labor costs. I believe the savings from substituting OICs in postmaster positions throughout the nation have already been included in those billions. There are inherent and blatant contradictions in the Administrative Record that must be corrected on remand.

It is not the statutory responsibility of the Commission to correct the Administrative Record for the Postal Service and certainly not to make its own surmise about what and/or whether there would be savings if accurate data were in the Administrative Record. Therefore, the decision to close should be remanded to the Postal Service to correct the Administrative Record and present a more considered evaluation of potential savings.

I am also concerned about the distances between the Imperial post office and those that are offered as substitutes. The Imperial post office is 29.3 driving miles from the replacement post office in Monahans, and 11.2 driving miles from the Grandfalls post office. Last week, the United States Senate passed legislation that limits the closure of post offices that are more than 10 miles apart in rural areas. The Postmaster General has informed the Commission that he expects to find other ways to serve such

distant post offices rather than close them altogether. This closing should be reconsidered within the context of the policies now being developed regarding distant rural post offices.

The Postal Service has designated Monahans as the administrative receiving post office for Imperial postal customers. The designation of the administrative receiving post office can be significant to local postal customers because that will be the location where undeliverable or accountable items are retrieved, where some parcels must be deposited, or certain other “in-person” business is conducted. The Administrative Record does not address with specificity reasonable customer concerns about the large travel distance to the new administrative retail post office. Without a more complete explanation of how removing the applicable retail facility to such a distant point will affect the community, the Postal Service has not satisfied its obligation to consider the effect of such closing or consolidation on the community served by the post office, as required by 39 U.S.C. § 404(d)(2)(A)(i).

Moreover, the Postal Service recently announced a moratorium on post office closings. It is confusing and perhaps unfair to require some citizens whose post offices have received a discontinuance notice as of December 12, 2011 to gather evidence and pursue an appeal to the Commission, while others whose post offices were in the review process, but had not yet received a discontinuance notice by December 12, 2011, have the respite of a 5-month moratorium and the opportunity to have further consideration of alternatives by the Postal Service.

The citizens of Imperial, Texas and their concerns regarding the loss of a neighborhood post office should be afforded the same opportunity to be heard and considered as the citizens of the approximately 3,700 post offices fully covered by the moratorium.

Ruth Y. Goldway

DISSENTING OPINION OF VICE CHAIRMAN LANGLEY

The Postal Service did not adequately consider the economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv). The Postal Service should take into consideration that a non-career postmaster relief (PMR) has been in charge of this facility for nearly 3 years, since August 2009, not an EAS-11 postmaster, and reflect the PMR's salary and benefits in its cost savings analysis.

In addition, the current annual lease of \$8,000 does not terminate until August 31, 2014, and does not have a 30-day termination clause. Administrative Record, Item No. 18. The Postal Service should note that any savings from the lease will not be realized for almost 2 years. As a government entity, the Postal Service should ensure that its cost/benefit analysis accurately identifies capturable cost savings and does not overstate savings.

The Administrative Record also indicates that retail services are available from an alternate post office, the Grandfalls post office, approximately 11 miles away from the Imperial post office. Final Determination at 2. The Grandfalls post office is being considered for discontinuance under the Retail Access Optimization Initiative (RAOI). The Postal Service should include within its discontinuance process a mechanism to ensure that due consideration is given to the impact on the community of the receiving administrative post office immediately being reviewed for discontinuance.

I find that the Administrative Record evidence does not support the Postal Service's decision to discontinue operations at the Imperial post office and should be remanded.

Nanci E. Langley